S.B. CIVIL WRIT PETITION NO.21/2004
Chandra Shekhar and anr. Vs. District Judge, Pali and anr.

Date : 1.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. K.C. Samdariya, for the petitioners.

Mr. J.K. Bhaiya, for the respondent no.2.

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Heard learned counsel for the parties.

According to the learned counsel for the petitioner, the court below committed serious illegality in allowing the petitioner's application under Order 6 Rule 17 C.P.C. and by that allowed one Hari Kishan Ojha to represent the trust in place of Shri V.M. Joshi who expired during the pendency of probate proceedings.

Learned counsel for the petitioner submits that in view of the specific bar under Section 233 of the Indian Succession Act, no probate can be granted to any association of individuals including trust or cooperative society, therefore, the probate application filed by the applicant itself was not maintainable.

Since the person representing the applicant trust unfortunately expired during pendency of the proceedings, therefore, the applicant though submitted application under Order 6 Rule 17 C.P.C. and has been allowed by the trial court, the trial court has not committed any error by not rejecting the application only on the basis of the title of

the applicant, therefore, so far as permitting Shri Hari Kishan Ojha to represent the applicant's trust is concerned, there appears to be no illegality.

The trial court rightly did not decide the objection raised by the petitioners about maintainability of probate proceedings in view of bar of Section 223 of the Indian Succession Act as that objection could not have been decided by the Court below while deciding the application for impleading a person to represent applicant in the proceedings. The petitioners will be free to raise this objection before the trial court. The trial court may decide this issue as first issue because it goes to the root of the matter.

In view of the above, this writ petition is disposed of with permission to the petitioners to raise the objection before the trial court about the maintainability of the probate petition.

(PRAKASH TATIA), J.

S.Phophaliya